



**DATE:** July 10, 2003

# STATE MINING & GEOLOGY BOARD

## POLICY & LEGISLATION COMMITTEE

**SUBJECT:** Item 13 – Approval to Send Notices of Loss of SMARA Authority to the Following Lead Agencies for Ordinances Not in Accordance with State Policy Pursuant to PRC §2774.5: Cities – Auburn, Compton, Jackson, Pacifica, Richmond, Rocklin, Rolling Hills, San Jacinto, Sutter Creek

**COMMITTEE RECOMMENDS:** The Committee recommends the SMGB notify the affected lead agencies of their loss of SMARA authority for failing to possess a surface mining ordinance in accordance with SMARA as required under PRC §2774 and pursuant to PRC §2774.5

**BACKGROUND:** On July 1, 1997, the SMGB, acting on a recommendation from the Policy Committee, instructed the Executive Officer to notify those SMARA (Surface Mining and Reclamation Act of 1975, Public Resources Code §2710 et seq.) lead agencies with surface mining and reclamation ordinances certified prior to 1991 that their ordinances may no longer be in accordance with current SMARA. The SMGB indicated that commencing in January 1998, it would begin a formal review of lead agency ordinances, pursuant to its authority under PRC §2774.3 and §2774.5, that may not be in accordance with statute.

During 1998, the SMGB reviewed 90 lead agency ordinances certified prior to 1991, and determined that 68 of them were deficient. These lead agencies with deficient ordinances were notified of the need to update their ordinances according to a time table established in statute.

By January, 1999, the SMGB had assumed limited SMARA authority for 25 lead agencies that defaulted on revising their ordinances within statutory time limits. Limited authority was selected by the SMGB at the time in order to provide an opportunity for these lead agencies to continue work on revising their ordinances while still retaining some administrative and enforcement authority. The SMGB, also, assumed full SMARA authority for 11 additional jurisdictions that had no surface mining ordinances. By late 1999, the SMGB had assumed full or limited SMARA authority for 48 lead agencies (cities and counties).

Today, the SMGB retains full SMARA lead agency authority for two counties through enforcement actions; and five cities that do not have mining ordinances. The SMGB has continued with its limited SMARA authority for one county and nine cities that have not yet provided updated mining ordinances as requested.

**DISCUSSION:** SMARA provides that cities and counties that have surface mining operations within their jurisdictions (lead agencies) shall adopt ordinances in accordance with State Policy that establish procedures for the review and approval of reclamation plans, financial assurances, and the issuance of permits to conduct surfacing mining operations (PRC §2728, §2774). The SMGB is provided authority to certify those local ordinances as being in accordance with state policy under PRC §2774.3. If the SMGB reviews a lead agency mining ordinance and finds the ordinance not in accordance with State Policy, and the lead agency does not revise the ordinance within a statutory time period, the SMGB must assume authority for the review and approval of reclamation plans until the lead agency's mining ordinance is revised and certified by the SMGB (PRC §2774.5).

Also, SMARA provides that in any jurisdiction in which the lead agency does not have a certified ordinance, the SMGB must approve the reclamation plan prior to the conduct of any surface mining operation within that jurisdiction. Any reclamation plan, approved by a lead agency under the lead agency's ordinance that was not in accordance with state policy at the time of approval, is subject to amendment by the SMGB.

SMARA defines the lead agency as the city, county, San Francisco Bay Conservation and Development Commission, or the SMGB that has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to SMARA.

As of this date, there are 9 cities and one county (Colusa) in which the SMGB has assumed only limited SMARA authority because these jurisdictions were in the process of revising their deficient ordinances. However, it is apparent that, in spite of several SMGB attempts since 1998 to encourage these jurisdictions to complete their ordinance revisions and to have their new mining ordinances certified by the SMGB, these 10 jurisdictions appear reluctant\* to do so.

The jurisdictions that have mining ordinances declared not in accordance with State Policy by the SMGB and over which the SMGB has assumed limited SMARA authority, and that would be subject to this notification of the loss of their full SMARA authority, are:

Cities: Auburn (12/30/98); Compton (12/31/98); Jackson (12/30/98); Pacifica (5/26/99); Richmond (8/23/98); Rocklin (12/30/98); Rolling Hills (8/24/98); San Jacinto(12/30/98); and, Sutter Creek (12/30/98).

\*County: Colusa (On June 2, 2003 the County submitted a revised draft ordinance for SMGB review and certification)

**COMMITTEE'S RECOMMENDATION:** The Committee recommends the SMGB notify the affected lead agencies of the loss of their SMARA authority for failing to possess a surface mining ordinance in accordance with SMARA as required under PRC §2774 and pursuant to PRC §2774.5

**SUGGESTED MOTION LANGUAGE:**

To approve notification:

*Mr. Chairman, in light of the evidence before the SMGB, I move that the SMGB notify the affected lead agencies listed in this Committee Report of their loss of SMARA lead agency authority for their failure to possess a SMGB-certified surface mining and reclamation ordinance that is in accordance with State Policy as required under PRC §2774 and pursuant to PRC §2774.5*